

Recognition of State and Government by the Czech Republic

Recognition of a state¹ is not expressly regulated in the Czech legal order. In such situations when there is an act towards another state, then this act is regarded as a part of the presidential right to represent the state externally. **Recognition of a state** has two levels – de facto and de iure. By recognition of a state it is expressed the readiness to negotiate with other state as a participant in international relations. There are two ways of recognising a state – either expressly or by establishment of diplomatic relations. Similarly, there are two ways of **recognising a government** – de facto and de iure. It represents recognition of new power holders in a state which is however recognised by the Czech Republic but where was a coup. It is recognition of a government in a broader sense, not only recognition of the state body called government but also of power relations (head of a state, government etc.).

De facto recognition is interim, limited and revocable. It lies in the fact that a state negotiates with another state (with its government, head of a state – it has to be a body which is entitled to such a negotiation). It may be a president or some other state body (government, Ministry of foreign affairs). President can for example invite a foreign head of state which is currently not de iure recognised and provide honours belonging to adoption of a foreign head of state or the president can negotiate an international treaty with the foreign state. **De iure recognition** is full, final and irrevocable. It is right of a head of state to represent the state externally. No other constitutional norm expressly regulates competence of some other body to recognise a state. Nevertheless, the factual situation is different in the Czech Republic.

After the dissolution of Czechoslovakia the newly created state Czech Republic which was originally a part of the federation of Czechoslovakia obtained full sovereignty. In frame of this process the parliament (the Czech National Council) appropriated the right to recognise other states. The Czech National Council recognised in the form of a constitutional statute all the states which former Czechoslovakia recognised till the day of its dissolution on 31. 12. 1992.²

From this point of view there is very interesting the attitude of the Czech Republic towards the state of Palestine. The State of Palestine was declared on 15. 11. 1988 by Jasir Arafat on the meeting of the Palestinian national council in Algeria and so far this state has been recognised by over 110 states. This state is recognised by the Czech Republic as well. Czechoslovakia de iure recognised the state of Palestine shortly after its declaration and established diplomatic relations on the level of embassy. The Czech Republic recognised all the states which Czechoslovakia had recognised. Once given de iure recognition is irrevocable. Due to this fact the Czech Republic recognises the state of Palestine although it is not manifested in its policy. This recognition is regulated by a constitutional statute and that is why it has to be respected by the Czech bodies. In its common policy the Czech bodies mainly support the American standpoint and present the position of the state of Palestine as a

¹ MIROSLAV POTOČNÝ: *Mezinárodní právo veřejné*, 2. edition Prague 1978, p. 166-170. MIROSLAV POTOČNÝ: *Mezinárodní právo veřejné, Zvláštní část*, Prague 1996, 20-24. VÍTĚZSLAV DAVID, PAVEL SLADKÝ, FRANTIŠEK ZBOŘIL: *Mezinárodní právo veřejné*, Prague 2004, ISBN 80-7201-473-0, p. 151-153. Sometimes is the meaning of recognition contested by the assertion that a state is factually created by having its territory, citizens and sovereign state power, in this moment a state automatically becomes a subject of international law. However, acceptance of a newly created state by other states is very important. IGNAZ SEIDL-HOHENVELDERN: *Mezinárodní právo veřejné*, reedition of the 1st edition Prague 2001, ISBN 80-85963-82-5, p. 135-139.

² Art 5 par 1 of the constitutional statute No.4/1993 Coll., on measures connected to dissolution of Czechoslovakia.

special autonomy on the occupied territories (not an independent state). This attitude proved in September 2011 when the Czech prime minister Petr Nečas during his visit in Israel on 15. 9. 2011³ and the Czech president Václav Klaus during his speech at the United Nations General Assembly meeting on 23. 9. 2011 refused the support of the Palestinian request for admission as a full member of the United Nations.⁴ This attitude is also manifested in the fact that there is an embassy of the state of Palestine in Prague whereas there is only a liaison office of the Czech Republic in Ramallah for contact with Palestinian bodies which does not have the status of embassy.

On 21. 5. 2008 the Czech government recognised the Albanian Republic of Kosovo by the decision of establishing diplomatic relations.⁵ The Czech government did so despite the disapproval of the president Václav Klaus. The president of the Czech Republic commented on the considered recognition of Kosovo: “*do not hurry, do not do it, it is not necessary*”. Nevertheless, he did expressly not oppose this governmental act and stressed that “*foreign policy is the matter of the government*”.⁶ It is true that both the foreign and national policy is the matter of the government. However, the government is entitled to make decision only provided that it has either a constitutional or a statutory competence for it. No legal regulation entitles the government to recognise states. It can be subsumed as unilateral legal act into the competences of the president to represent the state externally. This right underlies the countersignature and the president should exercise this right on a governmental proposal as the government is a top but not supreme body of the executive power. Kosovo was recognised by an incompetent body from the national perspective and that is why this procedure was legally invalid. However, this does not reverse the international binding effect because both prime minister and minister of foreign affairs can represent the state without special powers; the national invalidity cannot be invoked as a reason for invalidity of international activities of a state on condition that the considered invalidity is not quite obvious⁷, which is not the mentioned case. President can react to such a governmental act by not appointing the Czech ambassador in a given country and by not accepting the ambassador of the other party in the Czech Republic, which happened when the Czech government established an embassy in Pristine but the position of the ambassador has remained vacant and no Kosovar ambassador was accepted by the Czech president. Head officers of diplomatic missions are only *chargé d'affaires* (administrators of embassies) who are not accredited by the head of the state but by the minister of foreign affairs.⁸

Recognition of South Sudan was of a similar nature. South Sudan declared its independence on 9. 7. 2011 on the basis of previous referendum. The Czech government recognised this state without the presence of the Czech president in advance with a resolution from 29. 6. 2011.⁹ Creation of this new state was not internationally disputable because South Sudan was created with the consent of Sudan – South Sudan was originally an autonomous part of Sudan.

³ Uznání Palestiny v OSN nepodpoříme, ujistil Nečas Izrael, <http://www.novinky.cz/zahranicni/blizky-a-stredni-vychod/244767-uznani-palestiny-v-osn-nepodporim-ujistil-necas-izrael.html?ref=boxD>

⁴ MIROSLAV BENČ: Klaus odmítl jednostranné vyhlášení palestinského státu, *Právo* 24. 9. 2011, ISSN 1211-2119, p. 1 and 9.

⁵ Resolution of government from 21. 5. 2008 No. 635.

[http://racek.vlada.cz/usneseni/usneseni_webtest.nsf/0/3996AA9DDE0132FFC12574D000203539/\\$FILE/635%20uv080521.0635.pdf](http://racek.vlada.cz/usneseni/usneseni_webtest.nsf/0/3996AA9DDE0132FFC12574D000203539/$FILE/635%20uv080521.0635.pdf)

⁶ Partie, TV Prima, 17. 2. 2008. <http://www.novinky.cz/domaci/133389-klaus-nepodporuje-uznani-kosova.html>

⁷ Analogically the art. 46 of the Vienna Convention on the Law on Treaties No. 15/1988 Coll. can be applied here.

⁸ Art. 14 par. 1 letter c) of the Vienna Convention on Diplomatic Relations No. 157/1964 Coll.

⁹ Resolution of government from 29. 6. 2011 No. 509.

[http://kormoran.vlada.cz/usneseni/usneseni_webtest.nsf/0/60D3A1A0A6AE7A6CC12578CA003CB24D/\\$FILE/509%20uv110629.0509.pdf](http://kormoran.vlada.cz/usneseni/usneseni_webtest.nsf/0/60D3A1A0A6AE7A6CC12578CA003CB24D/$FILE/509%20uv110629.0509.pdf)

Only the Czech minister of foreign affairs Karel Schwarzenberg de iure recognised on 29. 8. 2011 the Libyan National Transitional Council as a new Libyan government after the troops of the former dictator Muammar Kaddafi were defeated.¹⁰ Karel Swcharzenberg commented on this: *“I am a supporter of the old international law which recognises a government as soon as it controls a territory.”*¹¹ This Schwarzenbergs statement is true only on condition that the state is recognised as such and the control of the territory seems to be long-term. However, even in such a case the government does not have to be recognised, especially de iure.

¹⁰ Declaration of the minister of foreign affairs Karel Schwarzenberg on the events in Libya from 29. 8. 2011, http://www.mzv.cz/jnp/cz/udalosti_a_media/prohlaseni_a_stanoviska/x2011_08_29_prohlaseni_ministra_schwarzenberga_k.html

¹¹ ČTK report from 29. 8. 2011.